United States Department of Labor
Employees' Compensation Appeals Board

K.B., Appellant	)	
and	)	**Docket No. 17-0277**
	)	**Issued: March 16, 2018**
DEPARTMENT OF HOMELAND SECURITY, CITIZEN & IMMIGRATION SERVICES, Laguna Niguel, CA, Employer	)	

Appearances:
Daniel M. Goodkin, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 18, 2016 appellant, through counsel, filed a timely appeal from an August 19, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish that he sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On February 27, 2015 appellant, then a 59-year-old intelligence research specialist, filed an occupational disease claim (Form CA-2), alleging that, since 2008, he was subjected to a pattern of harassment by managers which caused him to develop a cardiac condition. He asserted that these actions against him that were unlawful, created a hostile work environment, and were retaliatory. Appellant first became aware of his condition and its relation to his federal employment on July 9, 2014. He stopped work on July 14, 2014.

In an October 23, 2014 declaration, appellant alleged that, in August 2008, he had requested leave without pay (LWOP) for military service to attend inactive duty for training during a workweek, but he was improperly charged for 24 hours of annual leave. In Spring 2009, he was required to attend a six-week training course at a time when his mother had serious health conditions. Appellant was her primary caregiver and he requested an excuse from the March training, which was granted. He registered for the next training in May and requested a second excuse, but this was improperly denied by supervisors T.B. and D.L. Appellant alleged that his managers had not informed him of his Family and Medical Leave Act (FMLA) rights. He also alleged that, on January 12, 2010 Deputy Director B.G. improperly issued a memorandum charging him with two counts of misconduct. The first count related to his e-mail to headquarters and the second charge was for failure to sign a proposed notice of suspension from work on April 26, 2013 and for filing an Equal Employment Opportunity (EEO) complaint.

Appellant noted being on FMLA-protected leave for most of July through August 2009 to care for his terminally-ill mother. He was approached by T.B. and was told that management had noticed that he was using a considerable amount of leave, and that he may want to reconsider his priorities. On November 30, 2009 T.B. presented appellant with his 2010 performance work plan (PWP), and his performance plan and appraisal (PPA) which he refused to sign. On December 2, 2009, appellant was called to meet with T.B. and D.L. when T.B. read aloud a memorandum that instructed him to sign the 2010 PWP or risk disciplinary action that included possible removal from employment. He believed D.L. and T.B. were directing him to commit an unlawful act by signing the PWP.

Appellant asserted that, on December 4, 2012, D.L. learned that appellant did not complete a task that was assigned to him in November 2011 and exclaimed in the presence of at least two other supervisors, "You just didn't like what you were told to do!" On December13, 2012 appellant's first supervisor, E.F., informed him that he no longer needed to communicate with the FBI on a case due to a personnel change. Appellant replied in a classified e-mail to the FBI informing them that someone else would coordinate with them in the future, and notified E.F. by unclassified e-mail. He alleged that E.F. called him to the office, and exclaimed in an angry voice "You violated a directive!" Appellant indicated that he spoke with T.B. at his office later the same day to clarify what he was demanding of him and while he was standing at the doorway of his office, T.B. shouted at him, "Out, out, OUT!!!" He alleged that on January 31, 2013 E.F. instructed

him to perform some very basic tasks pertaining to a case, but appellant believed the tasks were more appropriate for lower level employees. In the early summer of 2013, appellant alleged that there were several officers who were loud and disruptive in the work section and he asked P.K., a supervisor, if he and another employee could be relocated to another area, but his request was denied. In October 2013, a section reorganization was initiated which moved appellant closer to the disruptive officers. Appellant protested, but the plan was implemented.

Appellant alleged that on May 21, 2014 he was preparing an Intelligence Information Report (IIR) as instructed by P.K. before she departed on leave. T.B. told him not to do this and advised that he should be working on an Intelligence Assessment (IA) instead. When P.K. returned on May 27, 2014, she instructed him to complete the IA within 10 days. On May 30, 2014 appellant explained that he could not guarantee that he would be able to complete the IA in 10 days, especially since the IA was supported with an open national security investigation by Special Agent M.P. He noted that his doctor ordered him to be on medical leave for stress from June 8 to 16, 2014. On June 19, 2014 P.K. e-mailed appellant to complete the IA by June 20, 2014, which appellant indicated was impossible. On January 20, 2010 appellant filed an EEO complaint based on discrimination of sex, age, and retaliation for EEO conduct.

On July 8, 2014 appellant was called to a meeting with D.L, E.F., and P.K. and was notified that he was making an unnamed person feel threatened and unsafe. They asked him to modify his behavior. On July 9, 2014 appellant requested an official investigation with the Office of Security and Integrity of the July 8, 2014 allegations made against him. He informed D.L., E.F., and P.K. of this request by e-mail. On July 11, 2014 appellant was escorted to D.L.'s office and was met by personnel security specialist and another investigator. He asserted that the investigator threatened that if he heard any more unfavorable information about him that he would be back and proceed to investigate. Appellant was not questioned or asked to give a statement on the conduct issues he raised, but only asked to change his own conduct. On July14, 2014 in a meeting with D.L. and E.F. he was told that he would be under E.F.'s direct supervision and his workstation would be moved to a different room. Appellant felt this would be a problem as E.F. had falsely accused him of misconduct in April 2013. He believed that the forced reassignment and being moved to another location were retaliatory acts which increased his stress. Appellant advised that Dr. Margaret L. Rasouli, a Board-certified cardiologist, took him off work for six months due to his heart condition and he began taking LWOP under the FMLA on August 6, 2014. On September12, 2014 he received a proposed letter of reprimand (LOR) from the Deputy Director, dated September 8, 2014, which required a response within 15 days of receipt.

Appellant also submitted medical evidence. Dr. Popak Firooznam, a Board-certified family practitioner, saw appellant on June 8, 2014 for anxiety. He took appellant off work from June 9 to 13, 2014. On August 28, 2014 Dr. James Garvey, Board-certified in emergency medicine, reported appellant's maltreatment from management. August 7, 2014 to February 6, 2015 reports from Dr. Rasouli noted appellant's treatment for a cardiac condition. She indicated that appellant had significant stress at work that contributed to a cardiac abnormality on July 9, 2014 and that he would be off work. Dr. Seth Bricklin, a psychologist, saw appellant on February 12, 2015. He diagnosed adjustment disorder with anxiety as a direct result of his job. Dr. Bricklin opined that appellant was unable to perform his work duties at the employing establishment.

On May 11, 2015 OWCP asked appellant to submit additional evidence that included a detailed description of the employment incidents that contributed to his claimed illness.

In a June 8, 2015 statement, appellant responded to OWCP's questionnaire and summarized his EEO complaint noting that his reassignment with significantly different responsibilities was an adverse action. He asserted that his work assignments were inappropriate for his job series and the work assigned was less complex than appropriate for his grade. Appellant further noted that his work was evaluated inappropriately using a generic annual performance work plan and he was prevented from engaging in the full range of activities expected of his job series. He indicated that the Equal Employment Opportunity Commission (EEOC) issued a summary decision on November 1, 2013 without a hearing and determined that he failed to provide compelling evidence indicating discrimination as the basis of management's actions.

Appellant also submitted documents pertaining to EEO and grievance matters. This included an April 26, 2013 notice of proposed suspension for two days for failure to follow supervisory instructions and disrespectful conduct. On May 21, 2013 appellant disputed the proposal because his supervisors assigned him tasks without due dates and he made progress on them within reasonable periods of time. He advised that his outburst at E.F. was provoked and was the product of an extended period in which he felt harassed. On August 8, 2013 D.C., a deputy director of the employing establishment, sustained the charges against appellant, but reduced the proposed suspension to an LOR. On September 20, 2013 appellant grieved the LOR. On October 8, 2013 K.B., the center director for the employing establishment, denied appellant's grievance regarding his LOR. She noted that if his supervisor's instructions were inappropriate he should have discussed it with the supervisor and, if not satisfactory, reported it to the chain of command. Regarding appellant's allegations that his disrespectful conduct was provoked, the director asserted that, regardless, appellant's statement was disrespectful. She noted that the reprimand was the lowest form of discipline and was not permanent. On April 18, 2014 K.B. reconsidered the matter and withdrew the LOR after having several meetings with appellant. She advised that she did not condone any behavior that involved disrespectful conduct or a failure to follow instructions.

Appellant submitted a January 12, 2010 EEO complaint, which alleged that the employing establishment discriminated against him based on age and sex. He submitted the November 1, 2013 EEOC decision which granted the employing establishment's motion for summary judgment as appellant had not established by a preponderance of the evidence that the employing establishment discriminated against him on the basis of his age, sex, and/or EEO activity.[3]

By decision dated August 25, 2015, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that his claimed condition was sustained in the performance of duty.

[3] On September 9, 2013 the U.S. Office of Special Counsel advised appellant that it made a preliminary determination to close its inquiry into appellant's allegations of retaliatory conduct by the employing establishment.

On August 31, 2015 appellant, through counsel, requested reconsideration. He contended that appellant implicated activities that involved performing regular or specially assigned work duties. On November 20, 2015 OWCP denied modification of its August 25, 2015 decision.

On January 19, 2016 counsel requested reconsideration. He reiterated prior allegations and submitted additional evidence. Evidence submitted included several e-mails. On May 27, 2014 P.K. wrote, "Please plan to complete the IA template conversion within two weeks, which would be by June 10, 2014. I want you to email me and Elliott halfway, 5 days in on June 3, 2014 to let us know your progress (as I will be on leave but will be checking my emails).... I want you to make it a goal to complete one LIR a week on the Fl schools, beginning June 10, 2014, ... if need be as J.M. can takeover during this time and assist with the FBI in working these cases for the time needed to complete the IA conversion...." Appellant responded on May 30, 2014, stating "There is no way I can guarantee to you, or Elliott, that I will be able to complete an Intelligence Assessment (IA) in any period of time, especially less than two weeks.... I wish I could give you assurances on precise timelines for completing finished intelligence products, but that is neither possible, nor practical."

Appellant submitted a notice from the employing establishment dated June 2, 2014, which indicated that he was due for reinvestigation for his continued employment with the employing establishment, which was required of all employees every five years. The notice indicated that appellant would need to complete the security paperwork and coordinate with his supervisor regarding the use of duty hours to comply with this requirement.

Appellant provided e-mails from his supervisor pertaining to the reinvestigation. On June 3, 2014 E.F. noted, "I am following up on [T.B.'s] email and want to reiterate that you are authorized a reasonable amount of time necessary to complete your SF-56 through e-OIP. Please note completing the e-QIP is not an excuse for missing mission deadlines previously received from PJ. These deadlines will not be moved again." Appellant responded on June 4, 2014 "I'll try my best, as always, but I make no guarantees about completing intelligence reports by artificial deadlines. The e-Qip will take several hours, probably a couple of days given my extensive USAFR history...." On June 19, 2014 P.K. indicated, "l am ordering that you complete the IA report by COB 6/20/2014, as the original deadline was for June 10, 2014.... Due to your background investigation and your request to take one day off to work on your background investigation, the deadline was then pushed back by one additional day, and then later the following week you were out sick the entire week of June 9 -- 13, 2014, and as such I gave you an additional 3 days setting the deadline to June 18, 2014. Shortly after returning to work on June 16, 2014, you found new research material consisting of 601 pages and as such I gave you an additional day and set the deadline to complete this IA report on June 19, 2014. Your OPM investigator called you and interviewed you for six hours on 6/19/2014, and as such you missed the 6/19/2014 deadline, so I am now requesting that you complete this report by COB 6/20/2014." Appellant responded on June 20, 2014 stating, "I cannot do the impossible. If you feel that this report should be completed by COB today, then you or Elliott need to show me how to accomplish a finished intelligence report by a date certain. There is simply no factual basis for making this a requirement.... I will not compromise the quality of intelligence in a finished intelligence product simply to meet an arbitrary deadline that has no operational, or otherwise rational, requirement."

Appellant submitted a June 4, 2010 affidavit from coworker S.K., who indicated that she heard from a lot of the intelligence research specialists that they were unhappy with their standards. With regard to the use of time-based quotas, she indicated that some other regions were using the same system. S.K. indicated that D.L. used the time-based quota system, but D.L. did not have any experience working with intelligence research work and set unrealistic standards for completing intelligence research.

By decision dated August 19, 2016, OWCP denied modification of its November 20, 2015 decision.

LEGAL PRECEDENT

To establish an emotional condition in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that he or she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the emotional condition.[4]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,[5] the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within coverage under FECA.[6] When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.[7] Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.[8]

Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.[9] Personal perceptions alone are

[4] *George H. Clark*, 56 ECAB 162 (2004).

[5] 28 ECAB 125 (1976).

[6] *See Robert W. Johns*, 51 ECAB 137 (1999).

[7] *Lillian Cutler*, *supra* note 5.

[8] *J.F.*, 59 ECAB 331 (2008).

[9] *M.D.*, 59 ECAB 211 (2007).

insufficient to establish an employment-related emotional condition.[10] On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force, or his or her frustration from not being permitted to work in a particular environment, or to hold a particular position.[11]

ANALYSIS

Appellant alleged that he sustained an emotional condition due to a number of employment interactions and conditions. OWCP denied his emotional condition claim because he failed to establish any compensable employment factors. The Board must initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of FECA.

Appellant has attributed his emotional condition to performing his regular or specially assigned duties of his position. He alleged that his workload was excessive and he was required to perform work within unrealistic timeframes. Appellant alleged that on May 27, 2014 his supervisor instructed him to complete the IA report within 10 days. On May 30, 2014 he explained that he could not guarantee that he would complete the IA in 10 days, especially since the IA was supported with an open national security investigation by a special agent. Appellant asserted that he was ordered by his doctor to be on medical leave for a week due to stress at work from June 8 to 16, 2014. On June 19, 2014P.K. e-mailed appellant to complete the same IA by June 20, 2014 and he responded that he could not do the impossible. However, appellant provided insufficient corroborating evidence to establish that he was overworked or sufficiently explain why his reaction was to his assigned duties instead of a disagreement with his supervisor over the assignment of duties.[12] There is no evidence to support appellant's general allegation of overwork. Appellant submitted an affidavit from a coworker, S.K., who noted other regions used the time-based quota system. S.K. indicated that D.L. used the time-based quota system and set unrealistic standards for completing intelligence research. This general statement from a coworker is insufficient to establish that appellant was overworked and required to perform work within unrealistic timeframes. There is no evidence that the employing establishment directed him to work within unrealistic timeframes. Rather, the record reveals that P.K. accommodated appellant by granting him several extensions to complete the IA report. In an e-mail dated June 19, 2014, P.K. advised that the original deadline was for June 10, 2014 and, due to a background investigation, appellant's request to take one day off to work on the background investigation, his use of sick leave from June 9 to 13, 2014, and an OPM investigator telephone interview for six hours June 19, 2014, the deadline was moved to June 20, 2014. Thus, to the extent that appellant alleged overwork,[13] or

[10] *Roger Williams*, 52 ECAB 468 (2001).

[11] *See Lillian Cutler*, *supra* note 5.

[12] *See infra*, notes 17, 18, and accompanying text, for discussion on administrative matters and work assignments.

[13] The Board has held that overwork, as substantiated by sufficient factual information to support the claimant's account of events, may be a compensable factor of employment. *Bobbie D. Daly*, 53 ECAB 691 (2002).

unrealistic deadlines,[14] this is not established by the evidence of record. Furthermore, he did not otherwise sufficiently attribute his emotional condition to performing a specific regular or specially assigned duty in his job. Therefore, appellant has not established a compensable factor under *Cutler*.[15]

Appellant made several allegations related to administrative and personnel actions. In *Thomas D. McEuen*,[16] the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under FECA as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under FECA would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[17]

Appellant alleged that, in August 2008, he requested LWOP for military service for inactive duty training during a workweek, but he was improperly charged with 24 hours of annual leave. Similarly, in spring 2009, he requested to be excused from a six-week training course because his mother had serious health conditions and he was her primary caregiver. Appellant was excused from the March training, but his second request to be excused was denied. He further alleged that his employing establishment failed to inform him of his rights under FMLA. The Board notes that the handling of leave requests and attendance matters are generally related to the employment, they are administrative functions of the employing establishment and not duties of the employee.[18] The Board finds that the employing establishment acted reasonably in this administrative matter. The factual evidence does not substantiate that the employing establishment unreasonably denied appellant leave. Appellant did not provide any corroborating evidence to substantiate that the employing establishment acted unreasonably in this matter.

Appellant asserted that he was improperly disciplined by the employing establishment on January 12, 2010 for misconduct related to his e-mail communication to headquarters, for a proposed suspension from work in 2013, which was later reduced to a proposed LOR on September 8, 2014, which was later withdrawn. Allegations of improper discipline relate to

[14] The Board has held that emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable. The Board, citing the principles of *Cutler*, listed employment factors which would be covered under FECA, including an unusually heavy workload and imposition of unreasonable deadlines; *see Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983). .

[15] *Supra* note 5.

[16] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

[17] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

[18] *See Judy Kahn*, 53 ECAB 321 (2002).

administrative or personnel matters unrelated to his regular or specially assigned duties and does not fall within the coverage of FECA.[19] Although the handling of disciplinary actions and evaluations are generally related to the employment, they are administrative functions of the employing establishment, and not duties of the employee.[20] The record, as noted above, fails to establish that appellant was improperly disciplined. To the extent that appellant is complaining about the manner in which a supervisor performs his duties as a supervisor or the manner in which a supervisor exercises his supervisory discretion fall, as a rule, is outside the scope of coverage provided by FECA. As noted, a supervisor or manager in general must be allowed to perform his or her duties and mere disagreement or dislike of a supervisory or management's action will not be actionable, absent evidence of error or abuse.[21] The Board also notes that the fact that the proposed suspension and the LOR, which were withdrawn does not establish error by the employing establishment.[22] Here, appellant did not submit any evidence establishing that the employing establishment erred in these matters. The Board finds that appellant has not offered sufficient evidence to establish error or abuse and the evidence does not establish that the employing establishment acted unreasonably in these matters.

Appellant alleged that on November 30, 2009 T.B. presented his 2010 PWP and PPA and instructed him to sign the 2010 PWP or risk disciplinary action. He felt that D.L. and T.B. were directing him to commit an unlawful act. However, it is not factually substantiated that the employing establishment forced appellant to sign a document on November 30, 2009. No further evidence was presented to corroborate these allegations. Furthermore, the handling of evaluations is an administrative function of the employing establishment and not a duty of the employee.[23] Appellant has not shown that the employing establishment erred in the matter and established a compensable employment factor in this matter.

Appellant alleged that assignment of work by his supervisors and unrealistic deadlines caused stress. On January 31, 2013 E.F. instructed him to perform very basic tasks that appellant believed were more appropriate for lower level employees. Appellant noted that on May 21, 2014 he was working on an Intelligence Information Report, T.B. told him that he should be working on an IA. On May 27, 2014 P.K. instructed him to complete the IA within 10 days and then extended the deadline until June 20, 2014. The Board notes that the assignment of work is an administrative function[17] and the manner in which a supervisor exercises his or her discretion falls outside the ambit of FECA. Absent evidence of error or abuse, appellant's mere disagreement or dislike of a managerial action is not compensable. The Board has also held that an employee's dissatisfaction with performing duties for which he or she feels overqualified or holding a position

[19] *See Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

[20] *Id.*

[21] *See Marguerite J. Toland*, 52 ECAB 294 (2001).

[22] *C.T.*, Docket No. 08-2160 (issued May 7, 2009) (the mere fact that personnel actions are later modified or rescinded does not, in and of itself, establish error or abuse).

[23] *C.S.*, 58 ECAB 137 (2006).

which he or she feels to be unchallenging or uninteresting is not compensable under FECA.[24] The Board finds that appellant has not offered sufficient evidence to establish error or abuse regarding his work assignments. The evidence does not establish that the employing establishment acted unreasonably. The record reveals that P.K. accommodated appellant granting him several extensions to complete the IA report, noting that the deadline was extended from June 10 to 20, 2014. The employing establishment has either denied appellant's allegations or explained the reasons for its actions in these administrative matters. Appellant has presented no corroborating evidence to support that the employing establishment acted unreasonably.

Appellant also implicated the location of his worksite as a cause of his stress. In 2013, he alleged loud and disruptive employees in his work section, but his request to be relocated to another was denied, and he was later relocated closer to the disruptive employees. On July 14, 2014 appellant was called into a meeting with D.L. and E.F. and was informed that he would be under E.F.'s direct supervision and his workstation would be moved. He believed that working under E.F. would be a problem because he initiated prior false accusations of misconduct against him in April 2013. Appellant further indicated that forced reassignment of a supervisor and movement to another work location away from his colleagues was retaliatory and added to his work-related stress. To the extent that appellant has alleged that the change in the location of his workstation constituted punishment or was inconvenient this, would be analogous to emotional frustration in not being allowed to work in a particular environment. It is well established that when disability results from an employee's frustration over not being permitted to work in a particular environment, to hold a particular position, or to secure a promotion, such disability does not arise in the performance of duty.[25] Appellant has not submitted sufficient evidence to establish that the administrative change in the location of his work location constituted administrative error or abuse by the employing establishment's management.[26] Thus, appellant has not established a compensable employment factor under FECA with respect to his work location.

Appellant alleged that he was harassed, screamed at, and humiliated by his supervisors and threatened with an investigation. To the extent that incidents alleged as constituting harassment or a hostile environment by a supervisor are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.[27] However, for harassment to give rise to a compensable disability under FECA, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under FECA.[28] Appellant alleged that on December 4, 2012 D.L. learned that appellant did not complete a task

[24] *See Purvis Nettles*, 44 ECAB 623, 628 (1993).

[25] *See C.O.*, Docket No. 09-0217 (issued October 21, 2009); *see also Charles D. Edwards*, 55 ECAB 258 (2004) (denials by an employing establishment of a request for a different job, promotion, or transfer are not compensable factors of employment under FECA, as they do not involve a claimant's ability to perform his or her regular or specially assigned work duties, but rather constitute a desire to work in a different position).

[26] *T.H.*, Docket No. 16-1164 (issued February 24, 2017).

[27] *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

[28] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991). *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

that was assigned to him in November 2011 and exclaimed in the presence of at least two other supervisors, "You just didn't like what you were told to do!." He alleged that on December13, 2012 E.F. called him to the office, and angrily exclaimed, "You violated a directive!" Similarly, appellant alleged that later the same day and while he was standing at the doorway of his office, T.B. shouted at him, "Out, out, OUT!!!" On July 8, 2014 he was called to a meeting with D.L, E.F., and P.K. and was notified that he was making an unnamed person feel threatened and unsafe, and they asked him to modify his behavior. Appellant alleged that on July11, 2014 he was escorted to D.L.'s office and was met by personnel security specialist and another investigator who threatened that if he heard any more unfavorable information about him that he would be back and proceed to investigate. The evidence of record fails to support appellant's claim for harassment as a cause for his emotional condition. General allegations of harassment are insufficient[29] and in this case appellant has not submitted sufficient evidence to establish disparate treatment by his supervisor.[30] Although he alleged that his supervisor harassed and engaged in actions, which he believed constituted harassment, appellant provided no corroborating evidence to establish his allegations.[31] The factual evidence fails to support appellant's claim that he was harassed or discriminated against in these matters.

The record also indicates that appellant filed grievances and EEO complaints alleging discrimination and unfair treatment. However, grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.[32] In this case, the granted summary judgement finding that appellant had not established by a preponderance of the evidence that the employing establishment discriminated against him on the basis of his age, sex, and/or EEO activity in the present case. As noted, a grievance regarding a proposed suspension, later reduced to a LOR, resulted in eventual withdrawal of the LOR. However, the documents associated with this matter do not make a finding that the employing establishment erred.[33] None of the evidence from these matters establishes improper action by the employing establishment. Thus, the evidence regarding the EEO grievance matters does not establish compensable harassment by the employing establishment.

Appellant alleged that his supervisors threatened, yelled, and verbally abused him. The Board has recognized the compensability of verbal abuse and threats in certain circumstances. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.[34] The Board finds that the evidence does not establish any specific incidents of compensable verbal abuse or threats. Appellant provided no corroborating evidence to establish

[29] *See Paul Trotman-Hall*, 45 ECAB 229 (1993).

[30] *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

[31] *See William P. George*, 43 ECAB 1159 (1992).

[32] *James E. Norris*, 52 ECAB 93 (2000).

[33] *See supra* note 22.

[34] *See Leroy Thomas, III*, 46 ECAB 946, 954 (1995); *Alton L. White*, 42 ECAB 666, 669-70 (1991).

any specific incidents. As noted, he alleged that T.B. told him that he might want to reconsider his priorities in view of his leave use. Appellant also, as noted, asserted that D.L., E.F., and T.B. either shouted at him or spoke to him disparagingly. The Board finds that the facts of the case do not sufficiently support any specific incidents of verbal abuse. Appellant provided no corroborating evidence to establish any specific incidents.[35] Thus, these allegations do not rise to the level of a compensable employment factor.[36]

Consequently, appellant has not established his claim for an emotional condition as he has not attributed his claimed condition to any compensable employment factors.[37]

On appeal appellant, through counsel, reiterates his allegations, asserting that he has established his emotional condition claim. As explained, the Board finds that appellant has not established his claim for an emotional condition as he has not established any compensable employment factors.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish an emotional condition in the performance of duty.

[35] *See William P. George*, 43 ECAB 1159, 1167 (1992) (claimed employment incidents not established where appellant did not submit evidence substantiating that such incidents actually occurred).

[36] *See Judy L. Kahn*, *supra* note 18.

[37] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record. *See Margaret S. Kryzcki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the August 19, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 16, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board